



THE OFFICE OF THE CITY CLERK

REPORT

A REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

DATE: July 1, 2004

REPORT NO.: 04-01

SUBJECT: CONFLICT OF INTEREST CODE REQUIREMENTS FOR
LAND-USE BOARDS

ISSUES

Shall the San Diego Municipal Code be amended to delete the requirement that "solely advisory" land-use boards have conflict of interest codes; and

Shall individual conflict of interest codes be adopted for those land-use boards which have established governmental decision-making authority.

BACKGROUND

Recent discussions between the City Clerk's Office and the Ethics Commission have brought to light findings of the Fair Political Practices Commission against a local jurisdiction approving conflict of interest codes which designate positions that do not entail the "making" or "participation in the making" of governmental decisions.

Since 1995, however, the San Diego Municipal Code has required a number of "solely advisory" boards that deal with land-use issues to have conflict of interest codes, as codified in SDMC section 26.0106.

Because of the conflict with state law, the City Clerk recommends that you amend the Municipal Code to repeal the requirement that solely advisory land-use boards—including commissions, committees and task forces—have conflict of interest codes.

The City Clerk further recommends that you eliminate the comprehensive conflict of interest code which currently exists for land-use boards, and adopt individual codes for those land-use boards which have established governmental decision-making authority, either

because they have actually made decisions; or have made recommendations which have, over an extended period of time, been regularly approved without significant amendment or modification.

CITY CLERK'S RECOMMENDATIONS

Support the proposed amendments to the San Diego Municipal Code (SDMC) related to Conflict of Interest Codes for Land-Use Boards:

1. Repeal SDMC section 26.0106, which requires land-use boards to have conflict of interest codes with a mandated scope of disclosure.
2. Amend SDMC section 26.0104 to correct citation of state regulation.
3. Amend SDMC section 26.0105 to correct citation of state code, and to remove citation to SDMC section 26.0106.
4. Eliminate the comprehensive conflict of interest code for land-use boards; adopt individual codes for the following (Attachment A):
 - a. Agriculture Board
 - b. Historical Resources Board
 - c. Mission Trails Regional Park Task Force
 - d. Old Town San Diego Planned District Design Review Board
 - e. Relocation Appeals Board
 - f. Tecolote Canyon Citizens Advisory Committee

DISCUSSION

In 1994, the City Clerk, City Attorney and City Manager reviewed the functions of all City boards whose members are appointed by Mayor and Council to determine whether those boards should be required to have conflict of interest codes. Approximately one-half of the boards reviewed fell within the guidelines of state law regarding conflict of interest disclosure in that (a) they were statutory filers under the Political Reform Act, or (b) they had clear decision-making authority and were thus required under state law to have a conflict of interest code, or (c) they made substantive recommendations which were, over an extended period of time, regularly approved without significant amendment or modification by another public official or governmental agency, and were thus required under state law to have a conflict of interest code.

The remaining half of reviewed boards were found to be "solely advisory" and had no clear decision-making authority, nor were their recommendations regularly adopted by the City Council. Consequently, they were outside the scope of state disclosure laws and regulations, and it was the recommendation of the City Clerk that these boards not have conflict of interest codes. However, the City Council directed the City Clerk and the City Attorney to draft an amendment to the Municipal Code to require conflict of interest codes

with limited disclosure for those “solely advisory” boards that dealt with land-use issues. The amendment was codified as SDMC section 26.0106.

The practical function of a conflict of interest code is (a) to designate positions which entail the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest, and (b) to describe the scope of economic disclosure, via a statement of economic interests, for individuals who hold those designated positions.

The Fair Political Practices Commission (FPPC) has found that a code-reviewing body such as a city council would fail to fulfill its obligations under the Political Reform Act if it allowed the designation of positions in a code which do not entail the making or participation in the making of governmental decisions. The FPPC’s finding is discussed in detail in the legal analysis included as part of a September 22, 2003 memorandum prepared by legal assistant Steve Ross (City Attorney’s Office) regarding conflict of interest codes for land-use boards (Attachment B).

The FPPC’s position is clear that members of land-use boards--or any boards--should be compelled to file statements of economic interests only if those boards have true decision-making authority. That authority may have been expressly granted by legislation, or may be the result of a history of making recommendations which are followed without significant alteration.

Mr. Ross’s 2003 memorandum presents his review and evaluation of 14 boards to determine the extent of their decision-making authority and, if indicated, the response by higher-level decision-making bodies such as the City Council to those boards’ recommendations. Based on the results of his research, Mr. Ross proposed eliminating filing restrictions for nine of the evaluated boards.

At its meeting of October 9, 2003, the Ethics Commission considered Mr. Ross’s recommendations and concluded that the following entities do not appear to have true decision-making authority:

- Crest Canyon Park Reserve Advisory Committee (inactive)
- Grading Advisory Board (inactive)
- La Jolla Shores Planned District Advisory Board
- La Jolla Underwater Park Advisory Committee
- Los Penasquitos Canyon Preserve Task Force
- Tecolote Canyon Natural Park Task Force
- Wetlands Advisory Board

The Commission further concluded that the following entities do appear to have true decision-making authority:

- Historical Resources Board
- Mission Trails Regional Park Task Force

Relocation Appeals Board
Tecolote Canyon Citizens Advisory Committee

The Commission diverged from Mr. Ross's recommendations regarding the Agricultural Board and the Old Town San Diego Planned District Design Review Board, concluding that both of those entities appear to have true decision-making authority.

The City Clerk concurs with the Commission's findings, and recommends that filing requirements be eliminated for those entities which do not have true decision-making authority.

It should be noted that Mr. Ross's memorandum includes a discussion of the Qualcomm Stadium Advisory Board. That board has its own conflict of interest code, separate from the filing requirements of SDMC section 26.0106. It is not the intention of the City Clerk to eliminate filing requirements for this board at this time.

SDMC section 26.0104 currently cites an FPPC regulation that no longer exists [2 California Code of Regulations 18700(a)(1)]. The City Clerk proposes to amend the section to cite an FPPC regulation which describes the circumstances under which committees, boards and commissions are deemed to possess decision-making authority [2 California Code of Regulations 18701(a), Attachment C]. The strike-out version of this change is included in Mr. Ross's memorandum (Attachment B), and separately as Attachment D.

Additionally, the City Clerk proposes to amend SDMC section 26.0105 by removing its citation to SDMC section 26.0106 (which is recommended for repeal), and by correcting a citation to the California Government Code. The strike-out version of this change is included in Mr. Ross's memorandum (Attachment B), and separately as Attachment E. The correction will cite Government Code section 82019, which, in conjunction with Government Code section 87302, exempts "any unsalaried member of any board or commission which serves a solely advisory function" from being designated in a conflict of interest code.

Finally, the City Clerk recommends the adoption of individual conflict of interest codes for each of six entities: the Agricultural Board, the Historical Resources Board; the Mission Trails Regional Park Task Force; the Old Town San Diego Planned District Design Review Board; the Relocation Appeals Board; and the Tecolote Canyon Citizens Advisory Committee. Members of each of these entities currently file statements of economic interests pursuant to SDMC section 26.0106 (Attachment F) and the "Land-Use Advisory Boards" conflict of interest code (Attachment G). Upon review of the legislative authority underlying each of the six entities, and the results of their recommendations, the City Clerk and the Ethics Commission concur that filing requirements should be maintained for them, as each has established governmental decision-making authority. The adoption of separate codes will allow the range of disclosable interests to be appropriately tailored to each entity.

SUMMARY

In summary, the City Clerk recommends that the comprehensive conflict of interest code for land-use boards be repealed, and that the economic interest filing requirement be eliminated for members of the Crest Canyon Park Reserve Advisory Committee; the Grading Advisory Board; the La Jolla Shores Planned District Advisory Board; the La Jolla Underwater Park Advisory Committee; the Los Penasquitos Canyon Preserve Task Force; the Tecolote Canyon Natural Park Task Force; and the Wetlands Advisory Board. To do so requires amendments to Chapter 2, Article 6 of the San Diego Municipal Code.

The City Clerk further recommends that individual conflict of interest codes be adopted for the Agricultural Board, the Historical Resources Board; the Mission Trails Regional Park Task Force; the Old Town San Diego Planned District Design Review Board; the Relocation Appeals Board; and the Tecolote Canyon Citizens Advisory Committee.

A handwritten signature in black ink, appearing to read 'Charles G. Abdelnour', with a stylized flourish at the end.

Charles G. Abdelnour
City Clerk

CGA:BS

Attachments

**CITY CLERK'S RECOMMENDATIONS
FOR CONFLICT OF INTEREST CODES FOR LAND-USE BOARDS**

-- SUMMARY --

The City Clerk recommends:

- a. repealing the comprehensive conflict of interest code for land-use boards;
- b. eliminating filing requirements for those land-use boards which do not appear to meet the requirements of making or participating in the making of governmental decisions; and
- c. adopting separate conflict of interest codes for those land-use boards which appear to meet the requirements of making or participating in the making of governmental decisions.

ELIMINATE FILING REQUIREMENT:

Crest Canyon Park Reserve Advisory Committee
(inactive)
Grading Advisory Board (inactive)
La Jolla Shores Planned District Advisory Board
La Jolla Underwater Park Advisory Committee
Los Penasquitos Canyon Preserve Task Force
Tecolote Canyon Natural Park Task Force
Wetlands Advisory Board

MAINTAIN FILING REQUIREMENT:

Agricultural Board
Historical Resources Board
Mission Trails Regional Park Task Force
Old Town SD Planned District Design Review Board
Relocation Appeals Board
Tecolote Canyon Citizens Advisory Committee

**OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO**

MEMORANDUM

MS 59

533-5800

DATE: September 22, 2003

TO: Lisa Foster, Deputy City Attorney
Charles Walker, Executive Director, City of San Diego Ethics Commission

FROM: Steve Ross, Legal Assistant

SUBJECT: Conflict of Interest Codes for Land Use Boards

INTRODUCTION

On February 13, 1995, the San Diego City Council adopted Ordinance O-18162, which added section 26.0106 to the Municipal Code. This act had the effect of requiring all "City boards and commissions that deal with land use issues" to adopt a conflict of interest code with this narrow scope of disclosure:

Investments, business positions, and sources of income of the type which engage in land development, construction, or the acquisition or sale of real property; or

Interests in real property located within the City, including real property located within a two-mile radius of any property owned or leased by the City. An interest in real property that is used as a personal residence is not required to be disclosed, unless the residence is also used for business purposes.

SDMC § 26.0106.

Most of these boards, commissions, committees, and task forces [hereinafter collectively referred to as "land use boards"] already had conflict codes, and such codes were required to be amended. Only the Crest Canyon Park Reserve Advisory Committee and the Relocation Appeals Board were required to adopt a conflict code for the first time. On March 20, 1995, as part of Resolution R-285467, the City Council adopted or amended the conflict of interest codes for these bodies:

Agricultural Board
Crest Canyon Park Reserve Advisory Committee
Grading Advisory Board
Historical Site Board
La Jolla Shores Planned District Advisory Board

La Jolla Underwater Park Advisory Committee
 Los Penasquitos Canyon Preserve Task Force
 Mission Trails Regional Park Task Force
 Old Town San Diego Planned District Design Review Board
 Relocation Appeals Board
 Tecolote Canyon Citizen Advisory Board
 Tecolote Canyon Natural Park Task Force
 Wetlands Advisory Board

Resolution R-285467 states that these bodies are required “to have Conflict of Interest Codes and to file Statements of Economic Interest (730 Forms), *regardless of whether a particular board, commission or committee is required to do so under state law.*” (emphasis added). At that time, the City Council made a finding that “unique and serious potential conflicts of interest arise by virtue of participation on City boards and commissions that deal with land use issues, regardless of whether they make substantive recommendations that are regularly adopted without change over and extended period of time.”

On December 2, 1996, the City Council adopted Resolution R-288131, which replaced the various individual conflict codes with one comprehensive code applicable to all of the land use boards.

Following its creation in 1998, the City Clerk added the Qualcomm Stadium Advisory Board to the above list of land use boards. This board, however, is not subject to the comprehensive land use board conflict code that the other boards use. It has its own conflict code, which contains a broader range of disclosable interests.

Mission Trails Regional Park Task Force was omitted from the list of land use boards itemized on the latest comprehensive land use board conflict code, dated November 20, 2000. This omission appears to be accidental, as there is no replacement conflict code for this entity in City Clerk files. The most recent conflict code explicitly listing Mission Trails Regional Park Task Force is the comprehensive code attached as Appendix A to Resolution R-288131, dated December 2, 1996.

LEGAL ANALYSIS

As set forth above, the City Council adopted or amended conflict of interest codes for the land use boards based solely on the fact that these boards were involved in land use issues, regardless of whether they would be required to file Statements of Economic Interests under state law. The Fair Political Practices Commission [FPPC] has stated, however, that such a rationale is not appropriate because it may impose filing requirements on individuals who are not required to file. The FPPC acknowledges in *In re Alperin*, 3 FPPC Ops. 77 (1977), that local governments may impose obligations on its officers and employees in addition to those set forth in the Political Reform Act [PRA], but the FPPC also states that such authority does not extend to converting local violations into state violations through a conflict of interest code. It held therefore that a code reviewing body would fail to fulfill its obligations under the PRA if it allowed the designation of positions in a code which do not entail the making or participation in the making of governmental decisions. Citing *City of Carmel-by-the-Sea v. Young*, 2 Cal. 3d 259, 272 (1970), the FPPC stated that a financial disclosure law will be invalid if it “intrudes alike into the relevant and the irrelevant private financial affairs of the numerous public officials and employees covered by the statute and is not limited to only such holdings as might be affected by the duties or functions of a particular office.” In accordance with the finding by the FPPC, members of the land use boards listed above should continue to

file Statements of Economic Interests only if it is established that they occupy positions that involve making or participating in making governmental decisions.

The establishment of such facts starts with an analysis of the definitions contained in the PRA and the regulations adopted by the FPPC.

A. Designated Employee

“Designated employee” means any officer, employee, member, or consultant of any agency whose position with the agency:

....

- (C) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

....

“Designated employee” does not include . . . any unsalaried member of any board or commission which serves a solely advisory function

Cal. Gov’t Code § 82019.

B. Public Officials

- (a) For purposes of Government Code Section 82048, which defines “public official,” and Government Code Section 82019, which defines “designated employee,” the following definitions apply:

- (1) “Member” shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority. A committee, board or commission possesses decisionmaking authority whenever:

- (A) It may make a final governmental decision;
- (B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
- (C) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Cal. Code Regs. tit. 2 § 18701.

Based on these definitions, it is clear that members of the land use boards should be compelled to file Statements of Economic Interests only if they possess true decisionmaking authority. Such authority may be conveyed legislatively or may be the result of years of making recommendations that are followed without significant modification.

Some of the land use boards have been specifically granted the power to make governmental decisions through legislative enactment. For these boards, little analysis is required. Their members clearly have an obligation to file Statements of Economic Interests. For other boards, however, the picture is not so clear. For them, the determination of whether or not they are “solely advisory” rests on how their recommendations have been treated over extended periods of time. For such boards, the charts that follow contain the results of a two pronged analysis of the recommendations made by these boards. On one hand, requests were made to board liaisons for documentation showing the board’s recommendations to decisionmaking bodies (such as the City Council) and what, if any, action resulted from those recommendations. On the other hand, searches were made of the last twenty-four years of City Council minutes, looking for instances where Council decisions were made following input from a specific land use board. While this approach cannot identify every recommendation or the outcome of every recommendation, the combination of these two approaches does provide some guidance in determining whether a particular board has a significant track record of making recommendations that have been followed over a significant period of time.

The following chart contains a summary of the conclusions reached following an evaluation of the legislative authority underlying each land use board and the results of their recommendations. As you can see, most of the land use boards do not appear to satisfy the requirements of section 18701. Following the summary chart, each land use board is discussed individually.

SUMMARY OF CONCLUSIONS

BOARD / COMMISSION / COMMITTEE / TASK FORCE	RECOMMENDATION REGARDING FILING REQUIREMENT
Agricultural Board	Eliminate
Crest Canyon Park Reserve Advisory Committee	Eliminate
Grading Advisory Board	Eliminate
Historical Resources Board	Maintain
La Jolla Shores Planned District Advisory Board	Eliminate
La Jolla Underwater Park Advisory Committee	Eliminate
Los Penasquitos Canyon Preserve Task Force	Eliminate
Mission Trails Regional Park Task Force	Maintain
Old Town San Diego Planned District Design Review Board	Eliminate
Qualcomm Stadium Advisory Board	Maintain
Relocation Appeals Board	Maintain
Tecolote Canyon Citizens Advisory Committee	Maintain
Tecolote Canyon Natural Park Task Force	Eliminate
Wetlands Advisory Board	Eliminate

AGRICULTURAL BOARD

Authority: SDMC § 26.17

Date Established: January 21, 1980

Duties: Review and advise on all agricultural land uses

Recommendation: Eliminate the filing requirement

According to board liaison Jeanne Wong, the Agricultural Advisory Board is not active and has not had a meeting within the past year and a half. She stated that despite serving the City for many years, priorities have shifted in the valley and the board hasn't been called upon for their expertise in a long time. Although section 26.17 requires this board to have nine members, it currently has only three members and one of them is in a nursing home and would likely not be able to attend any meetings that are scheduled.

As established by the chart set forth below, this board has made recommendations over an extended period of time, and those recommendations have been followed, but a more significant fact is that only five recommendations seem to have reached the City Council over the past two decades. Thus, it does not appear that its recommendations are "regularly" approved by the City Council. It is also questionable whether these relatively few recommendations qualify as "substantive." In its current incarnation, this board is virtually non-existent. For all of these reasons, therefore, it appears that members of this board should be relieved of the obligation to file statements of economic interests.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
01-12-87	amendment to Marron Valley Enterprises lease - reducing amount of rent	recommended reduction in rent	approved reduction in rent	Yes
04-11-94	extend dairy farm lease of Peter DeJong	recommended extending the lease	approved extending the lease	Yes
06-03-96	entering into 30 year lease with AM-SOD	recommended approving the lease	approved the lease	Yes
10-18-99	entering into 25 year lease with Orfila Vineyards	recommended approving the lease	approved the lease	Yes
03-06-00	entering into three 25-year lease with San Pasqual Christmas Tree Farms	recommended approving the lease	approved the lease	Yes

CREST CANYON PARK RESERVE ADVISORY COMMITTEE

Authority: unknown; not mentioned in SDMC

Date Established: unknown; sometime prior to 1980

Duties: unknown; inactive

Recommendation: Eliminate the filing requirement

According to the City Clerk, this board is currently inactive. There are no City Council minutes over the past twenty-four years reflecting any recommendations made by this committee. There is no reference to this committee in the Municipal Code. In its current incarnation, this board is virtually non-existent. It appears on the list of land use boards subject to the comprehensive land use board conflict code, but is mentioned in no other available document. Because it is inactive, there is no board liaison who can produce additional historical documents. It appears, therefore, that this board should be formally relieved of the obligation to file statements of economic interests.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
None could be located.				

GRADING ADVISORY BOARD

Authority: unknown; mentioned in SDMC §62.0102

Date Established: unknown

Duties: unknown; inactive

Recommendation: Eliminate the filing requirement

This board is currently listed on the comprehensive land use boards' conflict of interest code, but according to the City Clerk, this board has been inactive for quite some time. A search of the past twenty-four years of City Council minutes produces only a few mentions of this board, and even then it is mentioned only with regard to being on the list of land use boards. There are no minutes reflecting any recommendations made by this board. The board has no liaison to contact for additional historical information. Section 62.0101 is the only place in the Municipal Code that mentions the Grading Advisory Board. It does so in the context of defining this board as "the advisory board established pursuant to this Article." However nowhere else in the Article, or in the entire Municipal Code, is the board mentioned.

Because this board is inactive and does not exist except on paper, and only minimally in that context, it may be prudent to formally eliminate the name of the board from the comprehensive conflict code.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
None could be located.				

HISTORICAL RESOURCES BOARD

Authority: SDMC § 111.0206; Charter § 43

Date Established: December 9, 1997

Duties: Identify historic resources; review and make recommendations; adopt guidelines and standards; maintain register; make recommendations

Recommendation: Maintain the filing requirement

According to SDMC section 111.0206(d), this board's duties include identifying and designating historical resources. In other words, it makes governmental decisions. Although such decisions may be superseded by action of the City Council, the SDMC has clearly given this board the authority to be more than a "solely advisory" entity. Thus, there is no need to review the recommendations made by this board over a period of time. There does not appear to be any reason for eliminating this board's obligation to have a conflict of interest code.

LA JOLLA SHORES PLANNED DISTRICT ADVISORY BOARD

Authority: SDMC § 103.0302.2

Date Established: May 30, 1974

Duties: Review applications for permits; submit recommendations to the City Manager; recommend changes to regulations to the Planning Commission

Recommendation: Eliminate the filing requirement

During November 26, 2002, and December 3, 2002, telephone conversations, board liaison Mike Tudury advised that this board only occasionally makes recommendations to the City Council; it is more frequently involved in advising hearing officers and the Planning Commission. It is not uncommon for their recommendations to be rejected or significantly modified. Mr. Tudury's assessment is supported by the charts set forth below which do not exhibit a strong history of this board making recommendations that are followed without modification. An examination of City Council minutes shows only four recommendations over the past ten years, and on at least one occasion, their recommendation was not followed. With regard to recommendations made to the Planning Commission, Mr. Tudury provided documentation showing examples of the fact that the board's recommendations do get rejected, and even when not rejected, the recommendations are often significantly modified. Mr. Tudury stated that these documents are representative of the impact the board has on City decisions.

Given the lack of evidence that this board makes substantive recommendations that are regularly approved without significant amendment or modification, it appears that the members of this board should be relieved of the obligation to file statements of economic interests.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
12-07-93	Request by George Fujimoto for a hearing of an appeal from the decision of the Planning Commission in approving La Jolla Shores Development Permit	recommended approval of permit	appeal denied	Yes
04-26-94	Request by W. Kendall Melville for a hearing of an appeal from the decision of the Planning Commission in approving the permit for the Frankville/Kaya Residence	recommended denial of permit	hearing denied; permit approved	No
03-19-96	Request by Matthew Welsh for a hearing of an appeal from the decision of the Planning Commission in approving Coastal Development/La Jolla Shores Permit	approved the projects	denied request for hearing	Yes

01-15-02	appeal by the La Jolla Shores Association from the decision of the Planning Commission in approving the request for a Coastal Development Permit and Site Development Permit	approved the project	denied the appeal; granted the permit	Yes
DATE	MATTER	ADVICE GIVEN	PLANNING COMMISSION RESULT	ADVICE FOLLOWED?
01-15-02	demolition of restroom; construction of comfort station	recommended for approval	approved only after 4 attempts and numerous revisions	Yes, but only with significant revisions
08-20-02	modifications to restaurant building shell	recommended denial	approved	No.
08-21-01	demolition of house; construction of 2 story residence	approved	denied, then approved a year later after revisions	Yes, but only with revisions

LA JOLLA UNDERWATER PARK ADVISORY COMMITTEE

Authority: SDMC §26.30(e)

Date Established: August 27, 1970

Duties: Give advice as to the management, operation, and necessary restrictions on the use of the park

Recommendation: Eliminate the filing requirement

This committee is an offshoot of the City's Park and Recreation Board. It is a standing committee of that board, and is composed of select board members (who are already filers by virtue of their position on the Park and Recreation Board) who serve as the chair and vice-chair of the committee, and representatives from various specialties. For example, the nine member committee is supposed to include a marine biologist and a representative from the San Diego Council of Diving Clubs.

During an October 5, 2002, telephone conversation, committee liaison Brant Bass stated that the committee meets only once a year. He said that the committee occasionally makes a recommendation to the Park & Recreation Board, but does not have much involvement with the City Manager or City Council. He said that the Committee does not kept records of how its recommendations have been followed.

This committee name does not appear in any City Council minutes, resolutions, or ordinances over the past twenty-four years, except with regard to its conflict of interest code and the appointment of its members. It does not appear that it is a decisionmaking body or that it makes substantive recommendations that are regularly approved without significant amendment or modification. Therefore, it appears that the members of this board should be relieved of the obligation to file statements of economic interests.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
None could be located.				

LOS PENASQUITOS CANYON PRESERVE TASK FORCE

Authority: R-221307

Date Established: June 1978

Duties: Aid in facilitating City/County coordination and cooperation in the implementation of the plan for Los Penasquitos Regional Park.

Recommendation: Eliminate the filing requirement

Task force liaison David Monroe was asked to supply documentation showing actions taken by this entity over the past five years. A review of the materials submitted indicates that the task force has met only twice in the past five years, and the only action it took was to select a chair, approve new members, and make revisions to their bylaws.

A search of twenty-four years of City Council minutes produced only two significant instances where the name of this task force is mentioned. While the advice of the task force was followed in both instances, the relatively infrequent impact of this body on City decisions strongly suggests that the members of this board should be relieved of the obligation to file statements of economic interests.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
11-10-98	adopting the Los Penasquitos Canyon Preserve Master Plan, and certifying the information contained in EIR-0578	supported adoption of the master plan and certification of the EIR	motion to adopt passed	Yes
09-16-91	ordinance setting aside and dedicating various portions of Los Penasquitos Canyon Preserve for a public park	endorsed the plan	motion to adopt passed 10-07-91	Yes

MISSION TRAILS REGIONAL PARK TASK FORCE

Authority: R-277269

Date Established: Unknown; prior to April 1981

Duties: Advise various public bodies on matters relating to the development of the park

Recommendation: Maintain the filing requirement

The task force is made up of elected officials (from cities of San Diego, La Mesa, and Santee, and from County of San Diego), who already file Statements of Economic Interests. The one non-elected member of the task force serves as a result of being the chair of the Mission Trails Regional Park Citizen's Advisory Committee (currently Dorothy Leonard who also files as member of the Ethics Commission).

A review of City Council minutes reveals that the task force has made at least ten recommendations since 1984, and all of them have been followed by the City Council. More importantly, it appears that the task force has itself been making significant municipal decisions over a period of time. These decisions are set forth in the second half of the chart that follows, and include the imposition of fees, the naming of sites, and the siting of park facilities. There are no references to these actions in City Council minutes, thereby suggesting that these were actual governmental decisions, not just recommendations. The combination of these factors strongly suggests that the members of this task force should continue to file Statements of Economic Interests.

As mentioned above, all but one member of the task force are already required to file Statements of Economic Interests by virtue of holding elected public office. Therefore, the existence of a conflict code will actually affect only one person: the person who is a member of the task force because of being the chair of the Mission Trails Regional Park Citizen's Advisory Committee.

As indicated in the early part of this memorandum, Mission Trails Regional Park Task Force may have inadvertently been omitted from the latest comprehensive conflict of interest code for land use boards. Therefore, it should make its way back onto the list, or more preferably, be the subject of a new conflict of interest code crafted specifically for its particular role in governmental matters.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
01-17-84	construction of signs and historical monuments	approved the location of the signs	adopted resolution calling for bids for construction of signs	Yes
10-08-84	authorizing agreement with Reynolds Environmental Group for completing and updating the Mission Trails Regional Park Master	requested that master development plan be completed and updated	motion to adopt passed	Yes

	Development Plan			
07-21-86	authorizing the closure of Father Junipero Serra Trail to vehicular traffic between Mission Gorge Road and the Santee city limits during nighttime hours	recommended closure of the road	motion to adopt passed	Yes
01-28-91	changing membership status of representatives from Santee and La Mesa	approved revision	motion to adopt passed	Yes
09-23-91	execution of right of entry permit and tunnel easement deed with County Water Authority	reviewed and approved easement	motion to adopt passed	Yes
03-17-92	vacating Father Junipero Serra Trail Road between Mission Gorge Road and Simeon Drive	endorsed the vacation	motion to adopt passed	Yes
02-27-95	transfer portion of lot 147 of Mission Pacific Unit No. 1 to the Water Utilities Dept. for construction of pump plant	approved the transfer	motion to adopt passed	Yes
03-24-03	execute 10 year lease agreement with SDG&E	approved lease terms at 09-19-01 meeting	motion to adopt passed	Yes
07-14-03	execute 5 year lease agreement with McKinnon Broadcasting Company	approved the lease at 05/15/02 meeting	motion to adopt passed	Yes
07-14-03	execute 5 year lease agreement with McGraw-Hill Broadcasting Company	approved the lease at 05/15/02 meeting	motion to adopt passed	Yes
DATE	MATTER		ACTION TAKEN	MAKING A DECISION?
01-16-02	allocate \$85,000 from MTRP antenna fund to Kumeyaay Lake project		approved allocation of \$	Yes
01-16-02	naming the Deerfield BMX site		approved naming the site	Yes
05-15-02	allocate \$400,000 from MTRP antenna fund, and \$100,000 of contingency fund to Equestrian Staging Area		approved allocation of \$	Yes
05-15-02	naming Deerfield Street Entrance "Deerfield Circle"		approved naming of street	Yes
07-17-02	impose \$5 dumping fee for non-campers at Kumeyaay Lake		approved fee	Yes
07-17-02	impose \$9 shade structure for campground at Kumeyaay Lake		approved fee	Yes
07-17-02	impose 30 day maximum stay for non-campers at Kumeyaay Lake		approved limit	Yes
09-18-02	plant 12 oak trees and 12 shrubs in conjunction with Arbor Day		approved planting	Yes
09-18-02	set location of benches in park		approved locations	Yes

07-18-01	set location of benches and kiosks in Oak Grove Trail system	approved locations	Yes
07-18-01	set location of kiosks, picnic sites, event staging areas, restrooms, and signage	approved locations	Yes
09-19-01	revegetate firebreaks; adopt consultant's plan for revegetation	approved plans	Yes

OLD TOWN SAN DIEGO PLANNED DISTRICT DESIGN REVIEW BOARD

Authority: SDMC §103.0202(b); O-16906

Date Established: June 30, 1971

Duties: Advise on architectural design for development projects; recommend to the Planning Department any changes to development regulations; adopt rules of procedure; recommend that City Manager approve, modify, or disapprove applications for permits

Recommendation: Eliminate the filing requirement

The Old Town San Diego Planned District Design Review Board is composed of seven members, and by law must include an architect, three owners and one resident of property within the Old Town San Diego Community Planning Area, one business licensee, and at least two members of the Old Town Community Planning Committee. As the chart below indicates, the design review board does not have a significant history of making recommendations that are reflected in the minutes of City Council meetings. In fact, City Council minutes reflect more recommendations coming from the Old Town Community Planning Committee, a community group that involves itself in a broader range of issues than does the design review board.

A request was made to Teri Delcamp, liaison to the Old Town San Diego Planned District Design Review Board, seeking documentation regarding the recommendations this board has made over the past several years. She was unable to produce any information regarding recommendations to the City Council other than those identified in the chart below. On August 27, 2003, she confirmed that the board only occasionally makes recommendations directly to the City Council. She said that more typically, it makes its input to the Planning Commission or to Planning Department staff, but that such input is limited to recommendations and is not the final word on any particular project.

In light of the fact that the legislation creating this board does not authorize it to make governmental decisions, and given the lack of any evidence that the board makes substantive recommendations that are regularly approved without significant amendment or modification, it appears that the members of this board should be relieved of the obligation to file statements of economic interests.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
01-19-99	amendment to Old Town Planned District Ordinance to remove floor area ratio bonus for parking structures	requested the amendment	ordinance adopted 02/01/99	Yes
11/27/01	Matter of approving, conditionally approving, modifying or denying an Old Town San Diego Community Plan Amendment/Rezone/Site Development Permit No. 40-0973 to construct a three-story, 28 unit hotel with parking at the street level	approved the project	ordinance adopted 12/10/01	Yes

QUALCOMM STADIUM ADVISORY BOARD

Authority: SDMC § 26.1302; Charter § 43(a)

Date Established: May 4, 1998

Duties: Conduct public meetings to provide a forum on Qualcomm Stadium operations; serve as a liaison between the public, stadium tenants, contractors, and the City; provide recommendations to the Mayor and City Council on any action that requires City Council approval.

Recommendation: Maintain the filing requirement

This board is unique among the rest of the land use boards in that it does not appear on the comprehensive conflict code, but instead has its own conflict code. While the language in SDMC section 26.0106, which generally imposes a disclosure requirement on land use boards, may apply to the Qualcomm Stadium Advisory Board, the more applicable code section is section 26.1302, which pertains specifically to this board and states that “a conflict of interest code shall be adopted for this Board.”

During a December 16, 2002, telephone conversation, board liaison Sharon Wilkinson stated that this board currently meets once a month, and is actively involved in making recommendations to the City Council. According to her, the board’s recommendations are regularly both approved and disapproved. A recent disapproval involved a recommendation for several hundred thousand dollars worth of capital improvements to the stadium that was rejected by the Council. According to Deputy City Attorney Kelly Salt, the City Council has a consistent pattern of refusing to follow this board’s recommendations regarding the Stadium's budget.

The duties and functions of the Qualcomm Stadium Advisory Board are set forth in section 26.1303, and explicitly exclude any “financial or budgetary authority.” Its legislatively imposed duties and functions are limited to conducting meetings; serving as a liaison between the public, stadium tenants, contractors, and the City; and providing recommendations to the Mayor and Council. In other words, as stated in section 26.1301, the Stadium Advisory Board was created to “serve as an advisory board.”

Minutes of the Qualcomm Stadium Advisory Board dated June 7, 2001, indicate the board’s interest in clarifying its role, and in elevating its status to become some type of corporate entity and, according to Ms. Wilkinson, increase its marketing authority. The board drafted a proposed Memorandum of Understanding between the City and the board, and it sets forth the matters for which the board is to be consulted: stadium management and operational policies; issues concerning policies and operations at the stadium prior to submission to the City Council; terms of licenses and other agreements with third parties; appropriate fees for stadium facilities and services; and hiring consultants necessary for the performance of the board’s advisory duties. The MOU also provides that the board will create a subcommittee that will advise on negotiations with existing and prospective tenants. There is nothing in the MOU that would grant the board decisionmaking authority; its duties and functions would remain limited to an advisory capacity. However, the MOU would create a mandatory obligation for the City to consult with the board on the issues outlined above. According to Ms. Wilkinson, the MOU was adopted by the board in October of 2001, but no one on the board ever signed

it, and no one has signed it on behalf of the City. To date, both the incorporation and the MOU are unfinished concepts.

While the legislative authority granted to the board limits it to an advisory role, it is apparent that the board does exercise a decisionmaking function in two areas: management of the City suite, and memorials. According to Ms. Wilkinson, the board makes decisions regarding how credential holders tickets are distributed, and how the sign-in process works. The board is also responsible for the approval and placement of memorials, at least in part because the City does not pay for them. Board members are typically very involved in obtaining the funds to pay for memorials.

Board minutes from November 14, 2002, reflect that the board approved a contract with Ticketmaster granting that entity exclusive rights for special events at the stadium for three years. The minutes also reflect that the City Council did not need to approve the decision, thus indicating that the board made a final governmental decision in this instance. In fact, the minutes of the City Council do not reflect any input on the Ticketmaster contract.

Based on the above facts, and the contents of the chart set forth below, it does not appear that the Qualcomm Stadium Advisory Board has established a strong history of making recommendations that have been approved without modification by the City. Nevertheless, the board does appear to have established a history of making governmental decisions regarding the stadium's City box, the stadium's memorials, and the ticketing contract for special events. These actions appear to tip the scales in favor of requiring the board to continue to be subject to a conflict of interest code. Ms. Wilkinson indicated that the involvement of the Board may increase in the future given the current public concern regarding stadium issues. She stated that the board may be expected to conduct more detailed reviews and evaluations of stadium matters.

For all of the reasons set forth above, there appears to be sufficient justification to maintain this board's obligation to adhere to a conflict of interest code.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
09-14-99	Agreement with the Old Mission Beach Athletic Club for Use of the Qualcomm Stadium Practice Field	recommended approval of the agreement at their 08-05-99 meeting	passed resolution	Yes
12-06-99	Authorizing the City Manager to execute a four-year agreement for partial use and occupancy of Qualcomm Stadium with the San Diego Bowl Game Association, for the annual Holiday Bowl Game	recommended approval of the agreement at their 11-04-99 meeting	passed resolution	Yes
June 2000	The board sought an additional \$250,000 annual allocation for stadium improvements	The board voted to recommended this increase at their 06-06-00 meeting	the board's 08-03-00 minutes reflect that no additional funds were allocated	No

09-24-01	Prohibiting glass beverages within stadium parking lot	recommended approval of the ordinance at their 07-26-01 meeting	returned to City Manager for further review	pending indefinitely
06-24-02	Extend City's contract with Jehovah's Witnesses for the use of the stadium for their convention	recommended approval of the extension at 06-06-02 meeting	approved the extension	Yes
05-20-03	Authorizing the City Manager to enter into an agreement with SDSU regarding use of the stadium	recommended approval of the agreement at their 04-10-03 meeting	approved the ordinance	Yes
DATE	MATTER		ACTION TAKEN	MAKING A DECISION?
03-02-00	siting of memorial busts		approved location	Yes
03-01-01	memorial for Herb Klein		approved bust	Yes
03-06-02	adoption of Living Legends guidelines (with the level of recognition determined solely by the board)		approved drafting of policies	Yes
11-14-02	Agreement with Ticketmaster for exclusive rights for special events		approved agreement	Yes

RELOCATION APPEALS BOARD

Authority: SDMC §98.0302

Date Established: October 16, 1973

Duties: Hears complaints; determines compliance; makes findings and recommendations

Recommendation: Maintain the filing requirement

According to SDMC section 98.0302, this board's duties include hearing complaints relating to relocation brought by persons displaced by City action. It also has the responsibility of determining, in redevelopment cases, whether the Redevelopment Agency has complied with the relocation provisions of the California Health and Safety Code. The SDMC has clearly given this board the authority to be more than a "solely advisory" entity. Thus, there is no need to review the recommendations made by this board over a period of time. There does not appear to be any reason to eliminate its members' obligation to file statements of economic interests.

TECOLOTE CANYON CITIZEN'S ADVISORY COMMITTEE

Authority: Resolution R-257841; Charter § 43(b)

Date Established: January 24, 1983

Duties: Develop a proposed master plan for Tecolote Canyon Natural Park; advise and assist the Tecolote Canyon Natural Park Task Force and other government agencies with amendments; investigate and advise on goals, standards, and recommendations for open space.

Recommendation: Maintain the filing requirement

This committee was the subject of a January 13, 2000, memo written by Deputy City Attorney Cristie McGuire to Elections Analyst Bonnie Stone. Based principally on the data contained in the chart below, the memo concluded that this committee was not "solely advisory," but was instead an entity whose recommendations have been adopted without substantial change for over fifteen years. As the chart demonstrates, the vast majority of its recommendations over a significant period of time were followed by City Council. Subsequent to that memo, at least one additional recommendation of the committee has been followed by the City Council.

Based on the fact that this office has already made a finding regarding the Tecolote Canyon Citizen's Advisory Committee's obligation to file pursuant to a conflict of interest code, and there being no change in the duties or impact of this entity, it seems reasonable to maintain the filing obligations of its members.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
05-16-83	Request to hear appeal of Planning Commission's approval of Villamar development project	unknown	motion to hear appeal passed	unknown
05-24-83	Proposal to approve Tecolote Canyon Natural Park Master Plan	recommended amendments to the Plan	motion to adopt passed	Yes
05-31-83	Authorizing execution of amendment to lease with Tecolote Canyon Golf Course	Confirmed that current master plan allows golf course to continue	motion passed	Yes
07-12-83	Appeals from Planning Commissions's approval of Planned Residential Development and Tentative Map (Villamar)	TCCAC was one of the appellants	appeal denied, but with certain conditions adopted	unknown; TCCAC's concerns may have been addressed by permit conditions
12-05-83	Vacating a portion of Mt. Carol Drive	TCCAC reviewed, but position unknown	motion to continue passed	unknown

12-12-83	Vacating a portion of Mt. Carol Drive	TCCAC reviewed, but position unknown	motion to deny vacation passed	unknown
06-19-84	Vacating a portion of Mt. Carol Drive	TCCAC reviewed, but position unknown	motion to continue for a month passed	unknown
07-24-84	Vacating a portion of Mt. Carol Drive	unknown	motion to deny vacation passed	unknown
12-17-84	Authorizing execution of 1st amendment to Woodward-Clyde agreement	recommended implementation of measures outlined in amendment	motion to adopt passed	Yes
10-28-85	Authorizing execution of 3rd amendment to Woodward-Clyde agreement	recommended implementation of measures outlined in amendment	motion to adopt passed	Yes
07-28-86	Inviting bids for construction of Tecolote Canyon Erosion Control	reviewed and approved erosion control plans	motion to adopt passed	Yes
09-09-86	Amendments to Tecolote Canyon Natural Park Master Plan	TCCAC members testified in support	motion to continue passed	unknown
01-13-87	Amendments to Tecolote Canyon Natural Park Master Plan	TCCAC members testified in support	motion passed, with changes rec. by staff	Yes
09-26-88	Execute 1st amendment to Stone Fischer agreement re: services for design of fields, lots, buildings already shown on General Development Plan (GDP)	TCCAC had already prepared and approved GDP	motion passed	Yes
12-11-89	Execute 2nd amendment to Stone Fischer agreement re: services for design and construction of water line already shown on General Development Plan (GDP)	TCCAC had already prepared and approved GDP	motion passed	Yes
01-22-91	Approving application for state grant for erosion control in Tecolote Canyon Natural Park	TCCAC was a joint applicant for the grant	motion to adopt passed	Yes
06-10-96	Set aside sewer easement and pigging station easements, one in Tecolote Canyon Natural Park	TCCAC reviewed and approved location of station in park	motion to adopt passed	Yes
03-17-97	Street vacation, pedestrian right of way, and emergency easement in land abutting Tecolote Canyon Natural Park	TCCAC reviewed and had no objections	motion to adopt passed	Yes
05-30-00	dedication of certain City lands for park and recreational purposes and named the "Mission Valley Preserve"	TCCAC reviewed and recommended	motion to adopt passed	Yes

TECOLOTE CANYON NATURAL PARK TASK FORCE

Authority: Resolution R-257840; Charter section 43(b)

Date Established: January 24, 1983

Duties: Advise the City Council and Public Facilities & Recreation Committee of the City Council with regard to the master plan for Tecolote Canyon Natural Park; investigate and advise on goals, standards, and recommendations for open space and recreational use.

Recommendation: Eliminate the filing requirement

According to its enabling legislation, this task force is to be composed of Councilmembers from Districts 5 and 6, one appointee apiece from the two Councilmembers, the chair of the Tecolote Canyon Citizen's Advisory Committee, and two at-large members of the Tecolote Canyon Citizen's Advisory Committee. It was originally designed to serve as a liaison body between the Tecolote Canyon Citizen's Advisory Committee and the City Council. As indicated by the chart below, the task force was active only for a few years after its creation, and has since become completely inactive. At present, this body exists only on paper. It has not met for more than five years, and there is no indication that it will ever become active again. During a November 27, 2002, telephone conversation with Jane Witzke (on behalf of liaison David Monroe) in Parks & Open Space, Ms. Witzke confirmed that this board has not met in many years.

This task force was the subject of a January 13, 2000, memo from Deputy City Attorney Cristie McGuire to Elections Analyst Bonnie Stone. That memo concluded that this task force did not require a conflict of interest code because, in part, it had "not developed the requisite track record to become more than 'solely advisory.'" Because this task force has not met or taken any action since the date of the January 13, 2000 memo, it has failed to make any additional recommendations that would require a reconsideration of the conclusion reached in that memo.

Because this task force does not exist except on paper, it may be prudent to eliminate the name of this entity from the comprehensive conflict code.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
12-17-84	Authorizing execution of 1st amendment to Woodward-Clyde agreement	recommended implementation of measures outlined in amendment	motion to adopt passed	Yes
10-28-85	Authorizing execution of 3rd amendment to Woodward-Clyde agreement	recommended implementation of measures outlined in amendment	motion to adopt passed	Yes
01-21-86	Renaming Mt. Brundage Park and approximately one-half of Kelly Street Park as Tecolote Canyon Natural Park.	recommended passage	motion to adopt passed	Yes

WETLANDS ADVISORY BOARD

Authority: SDMC § 26.1002; Charter § 43(a)

Date Established: September 9, 1991

Duties: Advisory to the Mayor, Council, and City Manager on public policy matters relating to wetlands

Recommendation: Eliminate the filing requirement

Board liaison Robin Stribley provided a list of some of the recommendations the Wetlands Advisory Board made in the early to mid 1990s. This list has not been updated since 1996, but it serves to confirm Ms. Stribley's assertion that many of this board's recommendations were made to the City Manager and the Planning Department, rather than directly to the City Council. Even when a final municipal decision was made by the City Council on a matter considered by the board, the impact of the board's recommendation is not mentioned in the City Council minutes. It appears, therefore, that this board's recommendations are not "approved" as much as they are considered as one of many factors that lead to a governmental decision. For example, the materials provided by Ms. Stribley indicate that the Wetlands Advisory Board recommended changes to a Tidelands Policy in February of 1994. The minutes for the July 25, 1994, meeting of the City Council reflect that a proposed Tidelands Policy was adopted, and mention the recommendations made by the Rules Committee, but contain no mention of the Wetlands Advisory Board. Thus, it would be difficult to say that this board's recommendations are "regularly approved without significant amendment or modification" by the Council. Rather than making recommendations that are "rubberstamped," it appears that this board is more of a "solely advisory" body whose input is a factor in the middle of the decisionmaking process, rather than at the end.

An examination of City Council minutes shows no instances of the Wetlands Advisory Board being listed as an entity that made a recommendation for or against a docketed item. The name of this board does appear in a resolution (R-283075, pertaining to the Famosa Slough Enhancement Plan), but tellingly it is but one of four groups making the recommendation. Thus, the chart set forth below does not exhibit a strong history of this board making recommendations that would require its members to file Statements of Economic Interests. Given the lack of any evidence that this board makes substantive recommendations that are regularly approved without significant amendment or modification, it appears that the members of this board should be relieved of the obligation to file statements of economic interests.

DATE	MATTER	ADVICE GIVEN	COUNCIL RESULT	ADVICE FOLLOWED?
11-29-93	Famosa Slough Enhancement Plan	supported the plan	adopted the plan	Yes
07-25-94	Tidelands Council policy	appears (from WAB's records) that it recommended changes, although nature of recommendations is unknown.	adopted the policy	Unknown
10-30-95	Wetland enhancement at Crown Point	appears (from WAB's records) that it made recommendations.	approved application for grant funds	Unknown

ADDITIONAL RECOMMENDATIONS

Amendment to SDMC § 26.0104

If the Municipal Code is amended to eliminate the filing requirement for certain boards, it would present an opportunity to update an outdated provision in section 26.0104(b), which provides that

Upon recommendation of the City Manager in consultation with the City Attorney and City Clerk, the City Council shall determine by resolution whether a particular board or commission is required by Government Code section 87100 and 2 California Code of Regulations 18700(a)(1) to have, and be subject to, a conflict of interest code.

Regulation 18700(a)(1) no longer exists. The more appropriate regulation to cite is Regulation 18701(a), which is set forth in its entirety in the first section of this memorandum.

Thus, it may be prudent to change the language of section 26.0104(b) to the following:

Upon recommendation of the City Manager in consultation with the City Attorney and City Clerk, the City Council shall determine by resolution whether a particular board or commission is required by Government Code section 87100 and title 2, section 18701(a) of the California Code of Regulations ~~18700(a)(1)~~ to have, and be subject to, a conflict of interest code.

Amendment to SDMC § 26.0105

Government Code section 87100, which contains the basic prohibition against conflicts of interest, does not contain language that specifically addresses conflict of interest codes for boards and commissions, nor does it use the term “solely advisory.” This Government Code section is, however, so cited in SDMC section 26.0105. The “solely advisory” language attributed by this Municipal Code section is actually found in Government Code section 82019. Additionally, section 26.0105 cites to section 26.0106, which, as set forth below, is recommended for repeal. Therefore, it is recommended that section 26.0105 be amended as follows:

(a) The City Council finds that certain of the City’s boards and commissions are “solely advisory” within the meaning of Government Code section ~~87100~~ 82019, and are therefore not required by law to have conflict of interest codes.

(b) ~~Except as provided in Section 26.0106, for those boards and commissions not required by law to have conflict of interest codes, the~~ The City Council declares that citizens serving as volunteers on those boards and commissions shall not be required to complete and submit economic disclosure forms and shall not be required to disqualify themselves from deliberations or decision making for economic reasons.

Repeal of SDMC § 26.0106

As indicated above, section 26.0106 was enacted to require that members of all land use boards and commissions file Statements of Economic Interests. In light of the City's inability to impose this obligation on boards and commissions that do not meet the requirements of Government Code section 82019 and Regulation 18701(a), it is recommended that this Municipal Code section be repealed.

Elimination of Comprehensive Conflict Code

Of the fourteen land use boards discussed in this memo, only five are recommended to maintain their filing obligations. Of the five, only the Qualcomm Stadium Advisory Board has its own conflict code. The other four boards are subject to the comprehensive conflict code (with the exception of Mission Trails Regional Park Task Force, although this appears to be the result of an oversight rather than an intention for the comprehensive code not to apply to this entity). Because the four boards are related only through their shared "land use board" connection, it may be prudent to completely eliminate the comprehensive conflict code and instead prepare a separate conflict code to each board that continues to file.

CONCLUSION

Based on the analysis contained in this memo, of the fourteen "land use boards," it appears that only the Historical Resources Board, Qualcomm Stadium Advisory Board, Mission Trails Regional Park Task Force, Tecolote Canyon Citizens Advisory Committee, and Relocation Appeals Board have established governmental decisionmaking authority, either through actually making decisions or making recommendations that have, over an extended period of time, been regularly approved without significant amendment or modification. For this reason, it may be prudent to eliminate the filing requirements for the remaining boards.

Documentation supporting the conclusions reached in this memo are not attached to this memo, but are contained in multiple folders that can be made available upon request.

Steve Ross

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**TITLE 2, DIVISION 6, CALIFORNIA CODE OF REGULATIONS
DESCRIBES CIRCUMSTANCES UNDER WHICH A COMMITTEE,
BOARD OR COMMISSION POSSESSES DECISIONMAKING AUTHORITY**

18701. Public Official, Definitions

(a) For purposes of Government Code Section 82048, which defines "public official," and Government Code Section 82019, which defines "designated employee," the following definitions apply:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority. A committee, board or commission possesses decisionmaking authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(C) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

(2) "Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;

2. Adopt or enforce a law;

3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;

5. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;

6. Grant agency approval to a plan, design, report, study, or similar item;

7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code Section 87302.

(b) For purposes of Government Code Section 87200, the following definitions apply:

(1) "Other public officials who manage public investments" means:

(A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

(B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

(C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B) above.

(2) "Public investments" means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

(3) "Public moneys" means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

(4) "Management of public investments" means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.

COMMENT: In limited circumstances, the members of a nonprofit organization may be "public officials." (*In re Siegel* (1977) 3 FPPC Ops. 62.)

Note: Authority cited: Section 83112, Gov. Code.

Reference: Sections 82019, 82048, 87100, 87200, 87302, Gov. Code.

History

- (1) New section filed 1-22-76; effective thirtieth day thereafter.
- (2) Amendment of subsection (c) filed 4-28-82; effective thirtieth day thereafter.
- (3) Amendment of subsection (b) filed 10-19-89; effective thirtieth day thereafter.
- (4) Repealer and new section filed 11-23-98; effective upon filing.
- (5) Amendment filed 1-11-2001; effective 2-1-2001.

**SAN DIEGO MUNICIPAL CODE SECTION 26.0104(b)
AMENDMENT RECOMMENDED TO CORRECT CITATION**

Amendment to SDMC § 26.0104

If the Municipal Code is amended to eliminate the filing requirement for certain boards, it would present an opportunity to update an outdated provision in section 26.0104(b), which provides that

Upon recommendation of the City Manager in consultation with the City Attorney and City Clerk, the City Council shall determine by resolution whether a particular board or commission is required by Government Code section 87100 and 2 California Code of Regulations 18700(a)(1) to have, and be subject to, a conflict of interest code.

Regulation 18700(a)(1) no longer exists. The more appropriate regulation to cite is Regulation 18701(a), which is set forth in its entirety in the first section of this memorandum.

Thus, it may be prudent to change the language of section 26.0104(b) to the following:

Upon recommendation of the City Manager in consultation with the City Attorney and City Clerk, the City Council shall determine by resolution whether a particular board or commission is required by Government Code section 87100 and title 2, section 18701(a) of the California Code of Regulations ~~18700(a)(1)~~ to have, and be subject to, a conflict of interest code.

**SAN DIEGO MUNICIPAL CODE SECTION 26.0105
AMENDMENT RECOMMENDED TO CORRECT CITATION;
AND TO ADDRESS REPEAL OF SECTION 26.0106**

Amendment to SDMC § 26.0105

Government Code section 87100, which contains the basic prohibition against conflicts of interest, does not contain language that specifically addresses conflict of interest codes for boards and commissions, nor does it use the term “solely advisory.” This Government Code section is, however, so cited in SDMC section 26.0105. The “solely advisory” language attributed by this Municipal Code section is actually found in Government Code section 82019. Additionally, section 26.0105 cites to section 26.0106, which, as set forth below, is recommended for repeal. Therefore, it is recommended that section 26.0105 be amended as follows:

(a) The City Council finds that certain of the City’s boards and commissions are “solely advisory” within the meaning of Government Code section ~~87100~~ 82019, and are therefore not required by law to have conflict of interest codes.

(b) ~~Except as provided in Section 26.0106, for those boards and commissions not required by law to have conflict of interest codes, the~~
The City Council declares that citizens serving as volunteers on those boards and commissions shall not be required to complete and submit economic disclosure forms and shall not be required to disqualify themselves from deliberations or decision making for economic reasons.

**SAN DIEGO MUNICIPAL CODE SECTION 26.0104(b)
REPEAL RECOMMENDED**

§26.0106 Members of Land Use Boards and Commissions

(a) The City Council finds that unique and serious potential conflicts of interest arise by virtue of participation on City boards and commissions that deal with land use issues.

(b) The City Council finds that it is in the City's best interest that conflict of interest codes be adopted for those boards and commissions. The conflict of interest code shall be the same as that adopted for boards and commissions required by state law to have them (see Section 26.0104), except that the sole scope of disclosure shall be as follows:

Investments, business positions, and sources of income of the type which engage in land development, construction, or the acquisition or sale of real property; or

Interests in real property located within the City, including real property located within a two-mile radius of any property owned or leased by the City. An interest in real property that is used as a personal residence is not required to be disclosed, unless the residence is also used for business purposes.

(c) Members of these boards and commissions shall be subject to the disqualification provisions in their respective conflict of interest codes.

("Members of Land Use Boards and Commissions" added 2-13-1995 by O-18162 N.S.)

LAND-USE BOARDS AND COMMISSIONS CONFLICT OF INTEREST CODE

APPENDIX A

Designated Positions

<u>Position</u>	<u>Duties/Responsibilities</u>	<u>Category</u>
Member of any City land-use board or commission, required to have a conflict of interest code under the requirements of San Diego Municipal Code Section 26.0106, including but not limited to the following:	As required by board or commission.	1
<ul style="list-style-type: none"> - Agricultural Board - Crest Canyon Park Reserve Advisory Committee - Grading Advisory Board - Historical Resources Board - La Jolla Shores Planned District Advisory Board - La Jolla Underwater Park Advisory Committee - Los Penasquitos Canyon Preserve Task Force - Old Town San Diego Planned District Design Review Board - Relocation Appeals Board - Tecolote Canyon Citizen Advisory Board - Tecolote Canyon Natural Park Task Force - Wetlands Advisory Board 		

APPENDIX B

DISCLOSURE CATEGORY

Category 1	<p>(required by San Diego Municipal Code Section 26.0106)</p> <p>Investments, business positions, and sources of income of the type which engage in land development, construction, or the acquisition or sale of real property; or</p> <p>Interests in real property located within the City, including real property located within a two-mile radius of any property owned or leased by the City. An interest in real property that is used as a personal residence is not required to be disclosed, unless the residence is also used for business purposes.</p>
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